

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON**

HEATH GARCIA and VALERINE GARCIA,

Plaintiffs,

vs.

**ISLAND COUNTY, a county of the State of
Washington; ROBERT MIRABAL, and
Island County Deputy; MICHAEL
HAWLEY, and Island County Deputy.**

Defendants.

NO. 2:20-cv-01318-TLF

DEFENDANTS' ANSWER

Defendants answer Plaintiffs' Complaint as follows:

1.1 Admit.

1.2 Admit.

1.3 Admit.

2.1 Defendants are without knowledge or information sufficient to form a belief as to the truth of the factual allegations of this paragraph and therefore deny the same.

2.2 Admit.

2.3 Admit Defendant Mirabal is a Island County Sheriff's Deputy and was acting in the course and scope of his employment at all times material to this cause of action. Defendants object to the remainder of this paragraph as a conclusion of law and deny on that basis.

2.4 Admit Defendant Hawley was an Island County Sheriff's Lieutenant and was acting in the course and scope of his employment at all times material to this cause of action.

Defendants object to the remainder of this paragraph as a conclusion of law and deny on that basis.

3.1 Defendants admit the Sheriff's Office responded to the home of Nicholas Perkins on September 17, 2017 in response to a 911 call that Mr. Perkins was suicidal. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining factual allegations of this paragraph and therefore deny the same.

3.2 Deny.

3.3 Defendants are without knowledge or information sufficient to form a belief as to the truth of the factual allegations of this paragraph and therefore deny the same.

3.4 Defendants are without knowledge or information sufficient to form a belief as to the truth of the factual allegations of this paragraph and therefore deny the same.

3.5 Defendants are without knowledge or information sufficient to form a belief as to the truth of the factual allegations of this paragraph and therefore deny the same.

3.6 Deny.

3.7 Deny.

3.7.1 Deny.

3.7.2 Deny.

3.7.3 Deny

3.7.4 Deny

1 3.8 Defendants admit Mr. Perkins was shot and killed by an Island County Sheriff's Deputy.
2 Defendants are without knowledge or information sufficient to form a belief as to the truth of
3 the remaining factual allegations of this paragraph and therefore deny the same.

4 3.9 Defendants are without knowledge or information sufficient to form a belief as to the
5 truth of the factual allegations of the first sentence of this paragraph and therefore deny the
6 same. Defendants deny the second sentence.
7

8 3.10 Deny

9 3.11 Deny

10 4.1 Deny

11 4.2 Deny

12 4.3 Deny

13 4.4 Deny

14 4.5 Deny

15 5.1 Deny

16 5.2 Deny

17 5.3 Deny

18 6.1 Deny

19 6.2 Deny

20 7.1 Deny

21 7.2 Deny

22 7.3 Deny

23 7.4 Deny

1 Defendants deny plaintiffs are entitled to the relief they seek in the Prayer for relief,
2 items 1-5.

3 By way of FURTHER ANSWER and AFFIRMATIVE DEFENSES, Defendants allege:

4 1. That the plaintiffs have failed to state a claim for which relief can be granted.

5 2. That qualified immunity precludes plaintiffs' federal claims against Defendants
6 Mirabal and Hawley.

7 3. That the public duty doctrine and good faith immunity preclude plaintiffs' state
8 law claims.

9 4. That the plaintiffs' comparative fault proximately caused their damages, if any.

10 5. That the plaintiffs failed to mitigate their damages, if any.

11 6. That the plaintiffs' damages, if any, were caused by criminal and intentional acts
12 of non-parties not in the control of the Defendants, including, but not limited to, Nicholas
13 Perkins.

14 7. That the plaintiffs' damages, if any, were caused by fault of non-parties not in the
15 control of the Defendants, including, but not limited to, Nicholas Perkins.

16 8. That the plaintiffs expressly and impliedly assumed the risk of injury.

17 9. That sovereign immunity precludes plaintiffs' claims.

18 10. That the statute of limitations precludes plaintiffs claims.

19 Defendants expressly reserve the right to amend this Answer, including the addition of
20 affirmative defenses warranted by investigation and discovery, and to make such amendments
21 either before or during trial, including asserting other defense theories or conforming the
22 pleadings to the proof offered at the time of trial.
23
24
25
26

1 WHEREFORE, Defendants pray as follows:

2 1. That plaintiffs' Complaint be dismissed with prejudice and that plaintiffs take
3 nothing by their Complaint and that Defendants be allowed their costs and reasonable attorneys'
4 fees herein.

5 DATED this 28th day of September, 2020.

6 LAW, LYMAN, DANIEL, KAMERRER
7 & BOGDANOVICH, P.S.

8 *s/ John E. Justice*

9 John E. Justice, WSBA No. 23042
10 Attorney for Defendants

CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury under the laws of the United States of America that on this date, I caused to be electronically filed the foregoing document, and this Certificate of ECF Filing & Service, with the Clerk of the Court using the CM/ECF system, constituting service under Local Civil Rule 5(b):

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DATED this 28th day of September, 2020, at Tumwater, Washington.

s/ John E. Justice